IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7324 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE RAVI R.TRIPATHI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

GOKUL INDUSTRIES

Versus

DY. COLLECTOR, SABARKANTHA & ORS.

Appearance:

1. Special Civil Application No. 7324 of 2000

MR PS PATEL for Petitioner

MR HM BHAGAT for Respondent No. 1

MS NANDINI JOSHI AGP for Respondents No. 1,3

RULE SERVED for Respondent No. 2

CORAM : MR.JUSTICE RAVI R.TRIPATHI

Date of decision: 20/12/2001

ORAL JUDGEMENT

1. The petition arises from the order dated 15th

April, 1999, a copy of which is produced at Annexure-B, and the order dated 24th November, 1999, a copy of which is produced at Annexure-C, whereby the Deputy Collector, Sabarkantha, ordered to pay a deficit stamp duty of Rs.1,41,360=00 and penalty of Rs.250=00 within 90 days or else the petitioner will have to pay 24% interest for the period beyond a period of 90 days. The Appellate Authority by its order confirmed the order passed by the Deputy Collector and hence, the petitioner had to approach this Court.

2. The case of the petitioner is that the petitioner could not produce any reply to the notice dated 30th September, 1998 and the petitioner could not avail of the opportunity as the petitioner did not receive any notice from the Deputy Collector - respondent no.1. The case of the petitioner is that had the petitioner been afforded an opportunity of presenting his case before the respondent no.1-Deputy Collector, he could have convinced the authority that the document, which was registered on 28th August, 1998, was for the full consideration. It is also the case of the petitioner that the petitioner had produced before respondent no.2 - Appellate authority, that is, Chief Controlling Revenue Authority, but, it did not take into consideration the same and confirmed the order passed by the Deputy Collector. It is also submitted on behalf of the petitioner that the respondent no.2-Appellate Authority did not consider the documents produced by the Talati, who is in a position to submit the correct value and correct position of the land. The submission of the petitioner is that the unjust and arbitrary decisions of the authorities below are required to be quashed and set aside by this Court. It is also the case of the petitioner that the authorities below did not consider the judgement of this Court cited before them and have thus committed an error, which is required to be corrected by this Court. It is also submitted by the learned Advocate appearing for the petitioner that the Deputy Collector-respondent no.1 did not follow the procedure laid down under section 32-A(1) of the Bombay Stamp Act, 1958.

3. The learned Advocate appearing for the petitioner submitted that a similar question came up before this Court in Special Civil Application No. 9762 of 2000 with Special Civil Application No. 10005 to 10017 of 2000. These petitions came to be decided by this Court (Coram : M.S. Shah, J.) on 7th August, 2001. For the reasons recorded in the said judgement, the present petition is also allowed to an extent.

As the Court has not gone into merits of the controversy between the parties, the Deputy Collector is directed to decide the matter afresh after issuing notice to the party and extending him an opportunity of hearing. Amount of additional stamp duty, if any, deposited by the petitioner for the purpose of filing appeal before the Appellate Committee shall be subject to the outcome of the proceedings pursuant to the order of remand.

The petition stands disposed of with the above directions. Rule is made absolute. No order as to costs.

(Ravi R. Tripathi, J.)

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